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CENTRAL FAX CENTER**JUL 17 2006**REMARKS

Reconsideration of the present application is respectfully requested. In the first Office Action, various objections were raised as to the specification and drawings. Applicants addressed these objections in their prior response. Since the objections were not repeated in the Final Action, it is believed that the objections have been traversed and withdrawn.

In the first Office Action, claims 1-8 and 15-20 were rejected as anticipated by U.S. Patent No. 5,380,325 to Lahille et al. In the present office action, the anticipation rejection of claims 15-20 was maintained; however, claims 1-8 were rejected in view of a newly cited reference to Jammet et al. This action was made final on the presumption that Applicants' amendment to claim 1 necessitated the new grounds for rejection. Applicants request that the finality of this action be withdrawn. The amendment to claim 1 did not so dramatically alter the character of the claimed subject matter that a new prior art search was necessary. The new search was conducted because Applicants' amendment to claim 1 highlighted the differences between the claimed invention and the originally cited Lahille patent. The new reference cited in the present office action could have been applied to claim 1 as originally written, thereby providing Applicants with ample opportunity to address this new reference. In the event that the present amendment and arguments are not deemed to overcome the rejection in view of the new Jammet reference, Applicants request that the finality of the present action be removed to give Applicants a fair opportunity to address that reference.

Claims 1-8 were rejected as anticipated by the French patent application of Jammet et al. It is noted that the corresponding U.S. patent is 6,626,904, not 6,123,706 (which lists Lange as the first inventor). Applicants have amended claim 1 to incorporate the limitations of claim 2, namely the recitation of the bearing member. Applicants have further amended claim 1 to clarify the prior

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language in claim 1 that the flexible element supported the bone anchor along the longitudinal axis of the stabilization element. In particular, claim 1 as amended more accurately reflects the relationship between the flexible element and the bearing member, specifically that the flexible element contacts the bearing member along the longitudinal axis of the stabilization element. This is in contrast to the arrangement in the Jammet publication in which the opposing cups (8, 9) engage the ball (7) along the axis of the bone screw – i.e., perpendicular to, not along, the longitudinal axis of the stabilization element (18).

This difference is more than merely a design preference, as can be appreciated by comparing Applicants' FIG. 2 with FIG. 1 of the Jammet reference. In particular, it can be seen that Applicants' structure allows the use of a generally monolithic connector, while the Jammet approach requires two opposing cups. In addition, Applicants' claimed structure reduces the profile perpendicular to the stabilization element. In particular, the Jammet device interposes the upper and lower cups along the threaded shank of the bone screw, thereby increasing the vertical prominence of the construct. Applicants' claimed structure eliminates the upper and lower cups of Jammet so that the post 16 can be shorter than in the Jammet device.

It is therefore believed that claim 1 as amended is patentable over the Jammet publication or corresponding U.S. patent. Claims 3-8 depend from allowable claim 1, so these claims are believed to be allowable as well.

Claims 15-20 were rejected as anticipated by the Jammet reference or by the Lahille patent. In responding to Applicants' prior arguments of patentability, the Examiner pointed out that the claims did not identify the bearing member as monolithic. Applicant has amended claim 15 to define the connector as including a unitary bearing member, meaning that the bearing member is formed of a single primary component. As seen in FIG. 3 of the application, the connector may include set screws 40, 42 for fastening the rod ends and the bearing

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element to the bearing member. However, the body of the bearing member is a single piece structure, or monolithic as suggested by the Examiner. Claim 15 recites that this unitary bearing member supports a bearing race mounted therein, with the flexible bearing element mounted within the race.

The definition of a unitary bearing member in claim 15 overcomes both anticipation rejections. In particular, the Jammet device utilizes two opposing cups that engage the ball element. Thus, the Jammet device does not include a unitary bearing member. Moreover, the Jammet device does not include a bearing race mounted within the two opposing cups. Instead, the ball 7 bears directly against the interior surface 12 of both cups with no bearing race of other component interposed therebetween. Thus, Jammet cannot anticipate claim 15 because it fails to disclose each limitation of that claim. Moreover, there is no suggestion to modify the Jammet device to make the bearing member unitary. The Jammet device relies upon the upper and lower cup configuration to allow variable orientations of the elements E1 and E2 relative to each other. See, '904 Patent, col. 1, lines 52-59.

The Lahille patent does not disclose a unitary bearing member. In rejecting claim 15 in view of Lahille, it was suggested that the intermediate gripping head 23 of the bone screw 2 could be regarded as part of a bearing member in order to meet the limitation in Applicants' claim. Applicants' claim 15 recites a connector for connecting a bone screw to a stabilization element. The connector includes the bearing member. It is inappropriate to define a bearing member in Lahille to include part of the component being supported by the bearing member. Thus, it is improper to conscript the gripping head 23 of the bone screw in order to put together a structure in the Lahille device that would meet the language of Applicants' claim 15. This approach is nothing more than hindsight reconstruction of a prior art reference simply to sustain a rejection.

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Nevertheless, Applicants' amendment to claim 15 should more clearly distinguish over the Lahille device. No matter how the parts of Lahille are combined, they do not form a unitary bearing member. Thus, Lahille cannot anticipate Applicants' claim 15. Moreover, there is nothing in Lahille to suggest replacing the washer construct with a unitary bearing member since the Lahille device is concerned with damping movement along the axis of the bone screw, rather than permitting relative rotation between the stabilization rod and the bone screw.

It is therefore believed that claim 15 as amended is patentable over both the Jammet publication and the Lahille patent. Claims 16-20 depend from allowable claim 15, so these claims are believed to be allowable as well. Applicants have added new claim 31 which depends from claim 15. This claim defines the bearing race and flexible element as having mating spherical surfaces, which provides a further distinction over the flat washer construct in Lahille.

In view of the amendments to claims 1 and 15 and the foregoing arguments, it is believed that this application is in condition for allowance. Withdrawal of the rejection of claims 1-8 and 15-20 and action toward allowance of the present application is requested. The Examiner is invited to contact the undersigned agent of record if it is believed that a telephonic interview may help place this application in condition for allowance.

Respectfully submitted,



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